

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: January 29, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

—————  
Trademark Trial and Appeal Board  
—————

*In re Delta Faucet Company*  
—————

Serial No. 88411428  
—————

Edgar A. Zarins, Esq.,  
for Delta Faucet Company

Joseph P. McCarthy, Trademark Examining Attorney, Law Office 127,  
Mark Pilaro, Managing Attorney.

—————  
Before Bergsman, Lynch and English,  
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

Delta Faucet Company (“Applicant”) seeks to register on the Principal Register the mark CAFFREY in standard characters for, “plumbing products, namely, faucets, showerheads and toilets; lighting products, namely, lighting fixtures” in International Class 11.<sup>1</sup>

---

<sup>1</sup> Application Serial No. 88411428, filed May 1, 2019, based on Applicant’s allegation of its bona fide intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

The Examining Attorney has refused registration under Section 2(e)(4) of the Trademark Act, 15 U.S.C. § 1052(e)(4), on the ground that the applied-for mark is primarily merely a surname. When the refusal was made final, Applicant appealed. For the reasons set forth below, we affirm the refusal to register.

Section 2(e)(4) of the Trademark Act provides that absent a showing of acquired distinctiveness under Section 2(f), 15 U.S.C. § 1052(f), registration on the Principal Register must be refused if the proposed mark is “primarily merely a surname.” A term is primarily merely a surname if, when viewed in relation to the goods or services for which registration is sought, its primary significance as a whole to the purchasing public is that of a surname. *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 123 USPQ2d 1411, 1413 (Fed. Cir. 2017); *see also In re Beds & Bars Ltd.*, 122 USPQ2d 1546, 1548 (TTAB 2017); *In re Eximius Coffee, LLC*, 120 USPQ2d 1276, 1277 (TTAB 2016). Various inquiries may be considered in the factual determination of whether the purchasing public would perceive a proposed mark as primarily merely a surname, including the following that have been raised in this case: whether the term has a non-surname, “ordinary language” meaning; the extent to which the term is used by others as a surname – *i.e.*, rarity; whether the term has the structure and pronunciation of a surname; and whether the public may perceive the mark, in the alternative, to be primarily a meaningless, coined term. *See In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653-54 (Fed. Cir. 1985); *Eximius Coffee*, 120 USPQ2d at 1278 n.4 (reviewing factors from *Darty* and *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1333-34 (TTAB 1995) and noting there is no need to discuss

other inquiries for which the record lacks relevant evidence); *In re Adlon Brand GmbH & Co.*, 120 USPQ2d 1717, 1719, 1721 (TTAB 2016) (noting the consideration, if there is relevant supporting evidence of record, “of an alternative perceived meaning (which may include the perception of the mark as a coined term)”). We conduct our analysis from the perspective of the purchasing public because “it is that impact or impression which should be evaluated in determining whether or not the primary significance of a word when applied to a product is a surname significance.” *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975) (quoting *Ex parte Rivera Watch Corp.*, 106 USPQ 145, 149 (Comm’r Pat. 1955)).

The Examining Attorney argues that CAFFREY would be understood as a surname, acknowledges that no one connected with Applicant has the surname, but points out that CAFFREY has no other meaning, and maintains that CAFFREY has the structure and pronunciation of a surname. In support of the refusal, he introduced the following evidence:

- Search results from the Lexis.com Surname Database showing 5530 entries for “Caffrey.” See June 24, 2019 Office Action at 2.
- Search results from the Whitepages Database showing 5728 entries for “Caffrey.” See June 24, 2019 Office Action at 3-9.
- Search results from the online *American Heritage Dictionary* showing no recognized meaning for “Caffrey” as a word in the English language. See June 24, 2019 Office Action at 9.
- Search results from the online *Merriam-Webster Dictionary* showing no recognized meaning for “Caffrey” as a word in the English language. See June 24, 2019 Office Action at 11.
- Search results from the online *Columbia Gazetteer of the World* showing no entry for “Caffrey.” See June 24, 2019 Office Action at 14.

- An entry for “Caffrey,” on irishsurnames.com, showing the Caffrey Coat of Arms, Family Crest, and stating that “The names Caffey, Cafferty and McCaffrey are of Irish origin....” See June 24, 2019 Office Action at 15.
- An entry for “Caffrey” from HouseofNames.com providing background on it as an Irish surname, and noting settlers to the U.S. in the eighteenth and nineteenth centuries. The site also lists “Contemporary Notables of the name Caffrey,” including Stephen Edwin Caffrey, an “American television, film and stage actor.” See June 24, 2019 Office Action at 17-19.
- An entry from the “Wikipedia” website on “Neal George Caffrey,” identified as “the main character of the USA Network original series *White Collar*,” listing five seasons of the show. See June 24, 2019 Office Action at 22-27.
- An entry in the IMDb database for “Matt Bomer: Neal Caffrey,” also involving the *White Collar* TV series. January 22, 2020 Office Action at 2-5.
- Screenshots from the USA Network “Character Bio” webpage on the character “Neal Caffrey Played by Matt Bomer.” January 22, 2020 Office Action at 6-12.
- An ESPN online article with the headline “Panthers star Christian McCaffrey named All-Pro at 2 positions,” reporting on NFL player Christian McCaffrey’s selection to the Associated Press NFL All-Pro Team at two positions. January 22, 2020 Office Action at 13-18.
- A CBS Sports online article with the headline “Panthers’ Christian McCaffrey becomes third player in NFL history with at least 1,000 rushing, 1,000 receiving.” January 22, 2020 Office Action at 19-27.
- A Bleacher Report online article with the headline “Panthers’ Christian McCaffrey Reportedly Skipping 2020 Pro Bowl; RB Not Injured.” January 22, 2020 Office Action at 28-31.

This evidence demonstrates that “Caffrey” is an actual surname, and that “Caffrey” has no other “ordinary language meaning.” See *Darty*, 225 USPQ at 653; *Adlon*, 120

USPQ2d at 1721 (lack of dictionary entry for the applied-for mark created a “strong inference” that the mark had no other non-surname meaning).

Applicant, which did not submit any evidence during prosecution,<sup>2</sup> contends that CAFFREY is not merely a surname, and instead would be perceived as a fanciful term. 4 TTABVUE 4 (Applicant’s Brief). Applicant also argues that the number of surname occurrences found by the Examining Attorney indicates that the surname is “extremely rare.” *Id.* at 3.

No set rule governs the kind or amount of evidence necessary to show that the applied-for mark would be perceived as primarily merely a surname. *Eximius Coffee*, 120 USPQ2d at 1278. We reject Applicant’s argument that the alleged rarity of CAFFREY as a surname means that the public is unlikely to view it as primarily merely a surname. The evidence of thousands of individuals in a number of locations in the United States who bear the CAFFREY surname show that it “is not so unusual that such significance would not be recognized by a substantial number of persons.” *Darty*, 225 USPQ at 653. In addition, the use of the surname for the lead character in a USA Network series further demonstrates consumer exposure to CAFFREY as a surname.

Regardless, although we do not consider CAFFREY obscure, “even a rare surname is unregistrable if its primary significance to purchasers is a surname.” *Eximius Coffee*, 120 USPQ2d at 1281; *see also In re Industrie Pirelli Societa per Azioni*, 9

---

<sup>2</sup> We therefore disregard Applicant’s unsupported statement in its Brief about an Urban Dictionary definition of “caffrey.” Trademark Rule 2.142(d) provides that the record should be complete before an appeal is filed. 37 C.F.R. § 2.142(d).

USPQ2d 1564, 1566 (TTAB 1988), *aff'd*, 883 F.2d 1026 (Fed. Cir. 1989) (holding that despite the rarity of “Pirelli” as a surname, the relevant public still would view it primarily as a surname). The statutory provision makes no distinction between rare and commonplace surnames. *Adlon*, 120 USPQ2d at 1721; *Eximius Coffee*, 120 USPQ2d at 1282.

Applicant raises unsupported arguments that CAFFREY “falls with the category of words that do not have the appearance of surnames.” 4 TTABVUE 5 (Applicant’s Brief). As to the structure and pronunciation of the mark, in the absence of any objective evidence of the relevant public’s perception, this attorney argument fails to overcome the evidence of surname significance. *See Adlon*, 120 USPQ2d at 1724 (rejecting an argument based on structure and pronunciation because “[w]ith respect to this difficult type of argument, we would require more objective evidence, whether from Applicant or the Examining Attorney, of how members of the public would perceive the structure and sound ... and whether they would be likely to perceive it as similar to the structure and sound of other surnames, common words or coined terms.”). On the contrary, the Examining Attorney provided evidence that a well-known NFL player has the surname “McCaffrey,” showing consumer exposure as a surname to a term very similar in structure and pronunciation to Applicant’s CAFFREY mark.

Similarly, Applicant provided no evidentiary support for its argument that CAFFREY would be viewed as a fanciful term, and the argument therefore carries little weight. *See Adlon*, 120 USPQ2d at 1719 (stating that consideration will be given

to whether the public may perceive the mark to be primarily a meaningless, coined term only “if there is evidence to so indicate”). “In order to show that the public would perceive a proposed mark as a coinage, in the face of evidence establishing that the mark is a surname with no other recognized meaning, some objective countervailing evidence of such a perception is required.” *Id.* at 1723.

Overall, the record contains multiple sources showing that CAFFREY is an actual surname to which consumers have been exposed, and for which no other meaning exists. The record also features some proof that the structure and pronunciation of CAFFREY is similar to the MCCAFFREY surname of a well-known sports figure. Applicant’s unsupported argument that consumers would view CAFFREY as fanciful is unconvincing. Thus, on this record, the “primary significance of the mark as a whole to the purchasing public” is that of a surname. CAFFREY would be perceived by the purchasing public as primarily merely a surname within the meaning of Section 2(e)(4) of the Trademark Act.

**Decision:** The refusal to register is affirmed.